statute the executors took as tenants in common (*In re Kimberly's Estate*, 44 N. E. Rep. 945), the knowledge and act of one could not bind the others. *Rowbotham* v. *Dunnett*, 8 Ch. D. 430. Two then were held to take beneficially. The manner in which the court dealt with the case of Parsons is subject for wonderment. They were able to find an agreement between him and Miss Edson, that he should take the bequest subject to a legal obligation. This agreement they implied merely from the fact that Parsons knew the contents of the will. Solely because the executor was aware that Miss Edson wished to establish certain express trusts if possible, the court said he was as legally bound by the terms of the absolute bequest as by the declared trusts. They laid stress on his acquiescence; what he acquiesced in they seem not to have considered. He agreed, it is true, to what the testatrix wished. But is it not clear that she declared her willingness to rely on the honor of her executors in the event of failure of the express trusts? Was it not a moral obligation, merely, that she intended to impose? Why was the absolute bequest added if the testatrix expected it to have the same effect as the bequests on trust? In the light of a common sense reading of the will, it is difficult to understand how the court reached their conclusion, and the lamentable result of their reasoning makes its fallacy more apparent. Mr. Justice Ingraham, who dissented on the ground that the secret trust should bind all the executors, seems to be not without a sense of humor. He says, "It is a canon of construction universally applied, that the sole object of a court is to ascertain and enforce the intention of the testator."

THE RULE AGAINST PERPETUITIES. — The head-note to *Pulitzer* v. *Livingston*, to be reported in the 89th of Maine, ends with the words, "*Slade* v. *Patten*, 68 Maine, 380, overruled." It is a satisfaction to find a court willing to come out squarely against its former erroneous decision, instead of being content to distinguish it on a narrow ground, really unsatisfactory in point of principle. As has been remarked, however, "The history of the Rule of Perpetuities is full of slips by eminent judges, often acknowledged by themselves." The Supreme Judicial Court of Maine does well at the first opportunity to clear away the confusion which the writer who criticised *Slade* v. *Patten*, in 14 Am. Law Rev. 237, feared that the case would produce in the law of Maine.

Slade v. *Patten* was a case of a devise of land in trust for the testator's daughter and her heirs. This was held too remote, because, there being no provision for the termination of the trust, it might continue beyond the period allowed by the rule. In *Pulitzer* v. *Livingston* the owners of undivided interests in large tracts of land in this country conveyed to trustees, to hold in trust for the grantors, with full powers of sale and disposal, unlimited in point of time but with power to revoke reserved by each grantor as to his interest. It was held that the power of sale was not void for remoteness, the test being that the owners of the equitable estate had absolute power over the property. But the existence of the express power of revocation, "a most important difference" between the case before the court and *Slade* v. *Patten*, and sufficient for a distinction, did not deter them from showing most emphatically that neither the actual decision nor the equally objectionable *dictum* in that case is law in Maine.

Apart from clearing up the law on the validity of vested equitable estates

of indefinite duration, and showing that the Rule against Perpetuities is only concerned with the time of the vesting of future estates, *Pulitzer* v. *Livingston* is a valuable case on the question of the validity of powers of sale. A power of sale which may be exercised beyond the period of lives in being and twenty-one years is not bad if it is within the control of the owner of the estate, just as a contingent limitation after an estate tail is unobjectionable, because at any time it may rightfully be destroyed. See Gray, Perpet. §§ 490, 498, 506. While in *Pulitzer* v. *Livingston* each *cestui* could revoke the trusts as to his share, should a different result be reached where all the *cestuis* must join to defeat the power of sale? There is no practical reason for a difference, and technical requirements seem to be fully satisfied if the power is actually destructible. That is the result in *Seamans* v. *Gibbs*, 132 Mass. 239, though the reasons given are not satisfactory. In *Goodier* v. *Edmunds*, [1893] 3 Ch. 455, however, it was held otherwise, but without any allusion to this question. See 7 HARVARD LAW REVIEW, 427, where that case is criticised.

INJUNCTIONS AGAINST INTERFERENCE WITH BUSINESS.[1] — After an elaborate reargument by the complainants, the Supreme Court of Rhode Island in a short rescript has recently affirmed their prior decision in the case of *Macauley Bros.* v. *Tierney*, 33 Atl. Rep. 1. At the time of its prior decision, the case attracted considerable attention and some adverse comment. It belongs to that general class of cases which appears to be rapidly increasing in number at the present day, in which the plaintiffs seek to enjoin the defendants from interfering with their business rights. The list of cases in which the plaintiff has succeeded in this is a very long one; and those in which the defendants have succeeded in avoiding an injunction against them, though not nearly as numerous, yet constitute a respectable number, of which *McGregor* v. *The Mogul Steamship Co.* is the leading case. In all this class of cases the plaintiffs generally allege the acts of the defendants as wrongfully and maliciously contrived to injure them. This allegation, if not absolutely essential, is sufficient if maintained by proof, and is easily made. But malice being a question of fact, such a complaint is good upon demurrer, the malice being thereby admitted, and consequently such cases as *Delz.* v. *Winfree*, 80 Tex. 400, and *Olive* v. *Van Patten*, 7 Tex. Civ. App. 630, both of which contained such allegations and were decided upon demurrer, while correctly decided, are not opposed to other similar cases which were not decided upon demurrer, although they are stated to be so in a note to the case under discussion in 24 Am. Law. Reg. 776. The defence of the exercise of a legal right or privilege is so far an affirmative one that it must be set up by the defendants, as a consideration of the articles of J. H. Wigmore and Judge Holmes in previous numbers of this REVIEW will show. Judge Holmes in his excellent article has also shown that a privilege or excuse of the defendant for the commission of a tortious act has its foundation and its limitation in a broad public policy.

The contention is made, however, in the class of cases under discussion, that, "if the acts of the parties to the agreement are such that they do not serve a legitimate purpose, but appear to be wanton and malicious, an ac-

[1] For this note the Editors are indebted to Mr. William R. Tillinghast, of Providence, R. I.